



Office of the Attorney General
State of Texas

March 31, 1993

DAN MORALES

ATTORNEY GENERAL

Ms. Melissa Winblood-Franco
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR93-142

Dear Ms. Winblood-Franco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17805.

The City of El Paso (the "city") has received two requests for information relating to incidents involving family violence. Specifically, the requestor seeks criminal incident reports for case numbers 92257236 and 92234330, both of which involve incidents of aggravated assault. You have submitted the requested information to us for review and claim that is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You argue that because the requested information relates to incidents of family violence, it should be withheld from required public disclosure under section 3(a)(1) in conjunction with common law privacy. Information may be withheld from the public under common law privacy (1) when it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 611 (1992) (copy enclosed), this office held that whether information relating to family violence may be withheld under common law privacy must be determined on a case by case basis. Having reviewed the information submitted to us for review, we conclude that it is not intimate or embarrassing. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

You also assert that the requested information is excepted from required public disclosure under section 3(a)(8) of the act, which excepts:

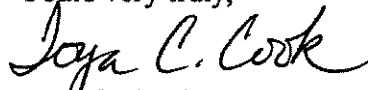
records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Where an incident involving allegedly criminal activity is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of information which relates to the incident. Open Records Decision No. 474 (1987) at 4-5.

You advise us that the requested information relates to pending criminal prosecution. We have examined the information submitted to us for review and conclude that, with the exception of front page offense report information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) and Open Records Decision No. 127 (1976), it may be withheld under section 3(a)(8) in its entirety. *See also* Open Records Decision No. 597 (1991) (front page offense report information may not be withheld from required public disclosure under section 3(a)(3) when such information has already been made available to the defendant in criminal litigation).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-142.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/GCK/le

Enclosure: Open Records Decision No. 611

Ref.: ID# 17805

cc: Ms. Ruby G. Lara
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